IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIFTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 676 of 2005

Between:

Koyyala Moshaiah, S/o. Katta Mallaiah,
R/o. Banojipeta, Narsampet Mandal, Warangal District.

..... PETITIONER

AND

1 Joint Collector, Warangal District, Warangal.
2 Revenue Divisional Officer, Narsampet, Warangal District.
3 Mandal Revenue Officer, Narsampet Mandal, Warangal District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ of mandamus declaring the action of the 1st respondent in passing the impugned order in appeal No.28/2004 dt. 30.10.2004 refusing to grant stay pending appeal against the order of the 2nd respondent cancelling the fair price shop dealership through proceedings No.E/1329/04 dt. 20.9.2004 as totally illegal and without jurisdiction and violative of principles of natural justice and consequently direct the respondents to continue the petitioner as Fair Price Shop Dealer of Banoji Peta Village, Narsampet Mandal, Warangal District and to pass such and further order or orders in the interest of justice.

Counsel for the Petitioner:MR.S.LAKSHMA REDDY

Counsel for the Respondents : GP FOR CIVIL SUPPLIES

The Court, at the stage of admission made the following :

ORDER:

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Petitioner was appointed as a dealer of the fair price shop of Banojipeta Village, Narsampet Mandal, Warangal District, in the year 1980. The 2nd respondent issued a show cause notice, dated 03.09.2004, directing him to explain as to why the authorization shall not be cancelled. Five charges were framed. Petitioner submitted his explanation on 13.09.2004. Through order, dated 20.09.2004, the 2nd respondent cancelled the authorization of the petitioner. Aggrieved thereby, petitioner preferred an appeal before the 1st respondent. He also filed an application for stay. The 1st respondent passed an order, dated 30.10.2004, refusing to grant stay but directing the 2nd respondent to finalise the case within two weeks. Hence, this writ petition.

Sri S.Lakshma Reddy, learned counsel for the petitioner submits that the 1st respondent did not apply his mind to the facts of the case and he proceeded as though the order challenged in the appeal before him is the one suspending authorization. He submits that when the 2nd respondent cancelled the authorization, the question of the 1st respondent directing him to finalise the case within two weeks is meaningless. Learned counsel also submits that though the show cause notice contained five allegations, and the petitioner submitted explanation for the same, the 2nd respondent had referred to as many as twelve allegations in the order of cancellation and did not consider the explanation submitted by the petitioner.

Learned Government Pleader for Civil Supplies submits that reference to order of

suspension in the order, dated 30.10.2004, passed by the 1st respondent, appears to be a typographical mistake, and once the authorization is cancelled, the same dealer cannot be permitted to operate pending disposal of the appeal. He also submits that the defect, if any, in the order passed by the 2nd respondent can be brought to the notice of the 1st respondent during the course of hearing of the appeal and that no interference is called for, at this stage.

In the ordinary course of things, this Court does not interfere with the orders passed on stay applications in the appeals preferred against orders of cancellation of dealerships. The reason is that unless and until an order of cancellation is set aside by an appellate authority, the very dealer cannot be permitted to function. Another reason is that the validity or otherwise of an order of cancellation can be decided only after examination of the records and not at interlocutory stages. Where, however, the orders are so patently illegal and by themselves reflect the fatal defects, the aggrieved party cannot be compelled to await till the disposal of the appeal. The challenge by the petitioner is two-fold, namely, as to the validity of the order passed by the 1st respondent while refusing stay as well as the very order passed by the 2nd respondent cancelling the authorization. The second aspect would arise for consideration if the order passed by the 1st respondent is found to be defective in any manner.

It is not in dispute that the subject matter of the appeal before the 1st respondent is an order cancelling the authorization of the petitioner. Once the 2nd respondent has cancelled the authorization, nothing remains to be done at his level nor he can be expected or required to pass any further orders. In the application for grant of stay filed by the petitioner, the 1st respondent passed the following order:

> "The appeal petition filed by Sri Koyyala Moshaiah, Ex.F.P.S.Dealer, Banojipet (V) of Narsampet U/Cl 20(i) of the A.P. State P.D.S. Control Order, 2001, against the orders of the R.D.O., Narsampet suspending the authorization of the petition vide reference 2nd cited has been examined. At this stage I am not inclined to interfere with the orders of the R.D.O., Narsampet to finalise the case within (2) Weeks from the date of receipt of this order and pass orders accordingly. The grant of stay as requested by the appellant is hereby negatived."

From this, it is clear that the 1st respondent proceeded as though the order appealed against is the one suspending authorization and that he directed the 2nd respondent to finalise the case within two weeks. It discloses a clear case of non-application of mind and the callous and casual manner in which the proceedings in an appeal were dealt with by the concerned officer. He has reduced the entire exercise of appellate power virtually to a farce. If this is the appreciation of the matter at the stage of consideration of application for stay, it is not at all difficult to imagine the nature of consideration, which would be given at the disposal of the main appeal.

The 1st respondent directed the 2nd respondent to finalise the case within two weeks. As observed earlier, when the 2nd respondent has already cancelled the authorization, the question of finalizing the case does not arise. Even assuming that the subject matter of the appeal is an order of suspension, issuance of such a direction while disposing of an application for stay is impermissible. The reason is that when the very order of suspension is the subject matter of the appeal, the subordinate authority cannot be compelled to render the very appeal infructuous. Viewed from any angle, the order passed by the 1st respondent cannot be sustained and this Court is compelled to observe that the officer concerned had exhibited impatience or incompetence in the matter.

As for the order passed by the 2nd respondent, it needs to be seen whether it suffers from any basic infirmity.

As pointed out in the preceding paragraphs, a show cause notice was issued to the petitioner, wherein five charges were framed. Petitioner submitted explanation with reference to all the five charges. What all the 2nd respondent wrote in the order enlisting the twelve allegations reads as under:

" In view of the above irregularities the authorization of Sri K.Moshaiah F.P.

Shop dealer is cancelled and this order will come into force with immediate effect."

In a way, the 2nd respondent appears to have derived inspiration from the 1st respondent in the matter of exercise of statutory powers. The law permits an adjudicatory agency to arrive at his own conclusion after referring to the explanation offered by the person against whom the action is proposed. However, it is fundamental that the explanation be considered before recording any finding. The 2nd respondent did not choose to examine as to what explanation the petitioner had offered. He left to winds the fundamental principle that in proceedings of this nature, the petitioner cannot be confronted with the allegations that did not form part of the show cause notice. But for the fact that an appeal is pending before the 1st respondent against the order, dated 20.09.2004, this Court would certainly have set aside the same.

For the foregoing reasons, the writ petition is allowed and the impugned order, dated 30.10.2004, passed by the 1st respondent is set aside. Further, the order, dated 20.09.2004, passed by the 2nd respondent, which *prima facie* is illegal and arbitrary shall remain suspended till the disposal of the appeal by the 1st respondent and the petitioner shall be entitled to function as dealer in the meanwhile. No order as to costs.

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(L.NARASIMHA REDDY,J)

Date: 25-01-2005

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Note: L.R. copy to be marked.

To

1 Joint Collector, Warangal District, Warangal.
2 Revenue Divisional Officer, Narsampet, Warangal District.
3 Mandal Revenue Officer, Narsampet Mandal, Warangal District.

4 2 CCs to the Government Pleader for Civil Supplies, High Court Buildings, Hyderabad (OUT).

5 2CD copies